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STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

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Analysis of Enrolled Senate Bill 487

Topic: Construction Lien
Sponsor: Senator Valde Garcia
Co-sponsors: Senator Raymond Basham
Committee: Senate Committee on Economic Development and Regulatory Reform
House Committee on Regulatory Reform

Date Introduced: May 9, 2007

Date Enrolled: June 19, 2007

Date of Analysis: June 21, 2007

Position: The department of Labor and Economic Growth supports the bill.

Problem/Background: After the January 2007 implementation of legislation intended to increase the stability and viability of the Construction Lien Fund established within the Construction Lien Act to protect residential customers, it was unclear whether some of the provisions would also apply to commercial contractors, subcontractors and suppliers who might file liens on commercial projects. Although the department never intended to apply those provisions (pertaining to lien waiver authentication) to commercial construction, it appeared that clarification was needed.

Description of Bill:

- Sections 110 and 115 of the act are revised with the same language pertaining to waivers of lien for residential construction only. All sample waiver forms specified in the act have also been revised to mirror the amended requirements.
- The language in section 110 specifies that for construction relating to residential property only, a waiver of lien is subject to authentication by the homeowner or their designee when a subcontractor, laborer or supplier named in the waiver has filed a notice of furnishing or is not required to provide such notice.
- Section 115 as amended requires that a copy of the waiver must be provided by the homeowner or designee if such verification is requested by a supplier, laborer or subcontractor who is named in a waiver not directly furnished by that person, and who has submitted a notice of furnishing or is not required to submit a notice of furnishing to the homeowner.

Summary of Arguments

For:

- As the bill was never intended to include commercial contractors, this will eliminate confusion regarding that issue.
- The bill also ensures that all notices pertaining to this issue contain clear language about the homeowner responsibility.

Against:

- Some could perceive the issue as unfair to homeowners who have a burden to notify persons they may not know or contract with. However, it is argued that in most cases, verification and notice will be done by the mortgage lender, not the homeowner, and further serve to protect the homeowner from liens against their property when they have paid the contractor for services of a laborer, supplier, or subcontractor. It is also noted that this requirement is unchanged by the bill.

Fiscal/Economic Impact

- (a) **Department:** There are no economic impacts upon the department, other than printing and mailing of the revised law, and updating the website.

Comments:

- (b) **State:** There is no economic impact upon the state.
- (c) **Local Government:** There is no economic impact upon local government.

Comments:

Other State Departments: There is no economic impact upon other state departments.

Any Other Pertinent Information:

The supplier, subcontractor or laborer will be relieved of the requirement to request copies from the commercial customer of the waivers of lien after they file a notice of furnishing or if they are not required to file a notice of furnishing.

Administrative Rules Impact:

The Construction Lien Act does not have any rulemaking provisions in it.